

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
DECEMBER 11, 2007  
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The Board of Trustees of the Town of Berthoud met for a regular meeting on Tuesday, December 11, 2007 in the Board Room at Town Hall. Mayor Karspeck called the meeting to order at 7:00 p.m.

MEMBERS PRESENT: Mayor Milan Karspeck  
Trustee Louis Gervasi  
Trustee Peder Thorstensen  
Trustee Glen Buckingham  
Trustee Michael Patrick  
Trustee Chase Sommars

MEMBERS ABSENT: Mayor Pro-Tem Don Ashcraft

STAFF PRESENT: Town Administrator Jim White  
Town Clerk Mary Cowdin  
BATS Director Eric Boyd  
Police Chief Glenn Johnson  
Town Attorney Bruce Fickel  
Deputy Town Clerk Charlene Reed

**PLEDGE OF ALLEGIANCE**

Mayor Karspeck led the pledge of allegiance.

**CITIZENS PARTICIPATION**

There were no items presented from the audience.

**REPORTS**

Administrator White reported that the first "Coffee With Jim" for 2008 will be held at 8:00 a.m. on January 11 at Grandpa's Café.

Attorney Fickel reported on the results of two cases which were filed by the Town. Both cases were lost for lack of documentation. He noted the lesson learned is document what we do and do what we document.

**CONSENT AGENDA**

The Consent Agenda consisted of the minutes of the regular meeting held on November 27, 2007, the bills allowed for November 2007, and the financial statement for October 2007.

**Trustee Gervasi moved to approve the consent agenda as submitted. Second by Trustee Sommars. The motion passed unanimously.**

**PROCLAMATION BHS STATE FOOTBALL CHAMPIONS**

Mayor Karspeck noted that the Berthoud High School Football Team won the state championship game last Saturday. He recognized the coaches present and read a proclamation in recognition of the team's achievements. He presented the coaches with a plaque. Coach McGuinn noted the coaching staff is very proud and happy with the team's accomplishments, and very pleased with the response from the community.

**PUBLIC HEARING – ORDINANCE RE: 2008 MILL LEVY**

Town Clerk Cowdin explained that Ordinance 1078, adopting the 2008 budget was passed on November 13, 2007. We received the final certification of valuation from Larimer and Weld Counties and the valuations changed slightly. Therefore we need to adopt a new ordinance with the corrected valuations for the 2008 budget.

Mayor Karspeck read the title of the proposed ordinance and opened the floor for public comment. There were no comments from the audience.

**Trustee Buckingham moved to approve ordinance # 1080 adopting the 2008 budget. Second by Trustee Patrick. The motion passed unanimously.**

**PUBLIC HEARING – RESOLUTION RE: FEES FOR  
BERTHOUD AREA TRANSPORTATION SERVICE**

Berthoud Area Transportation Service Director Eric Boyd explained that in order to strengthen the financial position of BATS and to help ensure its sustainability, the Town Board has in the past suggested that fares be established for BATS riders. The attached resolution proposes fares for the service, which would be effective January 1, 2008. He noted the recommendation is for the Town of continue to honor the original premise for BATS, which was to assist our riders sixty and over by not charging a fare, but to continue to accept donations for those with the ability to contribute.

Director Boyd noted that the resolution also recognizes that some riders do not have transportation, and are dependent on BATS for regular transportation. For those riders, we will be offering a monthly pass at a 25% discount based on a roundtrip fare out-of-town every weekday.

Director Boyd summarized the fares that are proposed.

Trustee Buckingham encouraged Director Boyd to develop a baseline of the current ridership so we will be able to determine if the implementation of fares affects our ridership. Director Boyd noted the intention is to monitor ridership very closely and report to the Board after six months. If there is a significant impact prior to that time, this issue will be brought back to the Board. Trustee Buckingham commended Director Boyd for this proposal and encouraged him to monitor this closely.

Director Boyd noted that the concern is that if we charge fares to seniors, we could affect the funding we receive on their behalf. That is why we will not be charging fees to seniors and will continue to accept donations for their rides. The seniors in Berthoud are strong supporters of BATS.

Mayor Karspeck opened the floor for comments and there were none.

**Trustee Buckingham moved to approve Resolution #23-07 establishing fares for BATS. Second by Trustee Sommars. The motion passed unanimously.**

#### **TRANSFER OF LIQUOR LICENSE - 535 3<sup>RD</sup> STREET**

Town Clerk Cowdin noted that the Board of Trustees granted a temporary liquor license to Retro Bistro on November 15, 2007. The owners, Jean-Pierre and Maria Barat are now requesting the permanent transfer of the hotel and restaurant liquor license from Baci to Retro Bistro. The property has been posted, all forms submitted and all fees paid.

**Trustee Buckingham moved to approve the transfer of the hotel and restaurant liquor license from Gala Inc. (Baci Restorante) to Banton Inc. (Retro Bistro). Second by Trustee Sommars. The motion passed with one abstention.**

#### **LIQUOR LICENSE RENEWAL BERTHOUD WINE & SPIRITS**

Town Clerk Cowdin noted that this item was continued from the November 27<sup>th</sup> regular meeting. The State of Colorado Liquor Enforcement Division cited Berthoud Wine and Spirits for a code violation in August of this year. We received a copy of the Order to Show Cause, Notice of Hearing and Forfeiture Action and the Stipulation, Agreement and Order in November 2007. We have also included documents from their violation in 2006, which indicates that the same employee was involved both times. Both violations involve sales to underage customers. The licensee agreed to a sixteen day suspension of their retail license. The license was actively suspended for five days, and eleven days was held in abeyance for a period of one year pending no further violations of the liquor code during that period of time. This item was continued at the last meeting since only four members of the Board were present. One of the options the Board can consider is to set a hearing to further discuss this situation, and if that is the decision of the Board, the hearing will need to be posted and the owner of the business notified.

Trustee Patrick explained that when this was discussed, none of the information from the enforcement operation was available. That information has been provided. It was also felt that this should be considered by as full a Board as possible.

Attorney Fickel recommended that if the Board wants to discuss whether to extend the license or set this for hearing, that is appropriate for this meeting. Discussion of the specific information provided regarding the enforcement operation should be done in a formal hearing. He also noted that if the Board does not want to be the hearing body, it would be appropriate to refer this to an Administrative Law Judge.

Trustee Buckingham asked Chief Johnson how the Liquor License Authority deals with repeated incidents by a business. Chief Johnson noted that the fines increase and the length of the suspensions increase. In 2006, when this occurred, the business was only closed two days. With this second occurrence, the business was closed for five days and had significant fines.

Trustee Thorstensen noted if the state levied a fine and a penalty, why is the Board involved. Chief Johnson noted that the state addresses the criminal offence, and leaves it up to the Town Board to address the civil incident. The Town has the right to assign additional fines if they so desire.

**Trustee Gervasi moved to approve the liquor license renewal for Berthoud Wine and Spirits. Second by Trustee Thorstensen.**

Trustee Patrick noted there is one concern that should be noted. If you review the minutes from the meeting on November 27, 2007, the applicant was asked whether the violations were by one employee and the applicant indicated that this was done by two different employees. The reports we received indicate that the same person was involved in both offences and it appears that this employee may be related to the applicant.

Mayor Karspeck noted that when this occurred last year, the Police Department was putting together an educational program for our licensees. Chief Johnson noted the program was offered last year and none of the businesses in Berthoud participated. He noted the owners of Log Cabin Liquor were unable to attend the training we provided, but they did attend a program offered on a different date.

Mayor Karspeck felt that would be appropriate to require training for our liquor licensees.

**Trustee Buckingham moved to include the requirement that the applicant and all of his employees have mandatory training through a program as directed by the Berthoud Police Department. Second by Trustee Thorstensen. The amendment passed unanimously.**

Trustee Buckingham suggested that if we have any further problems with this applicant, stronger measures will need to be passed by the Board. We cannot have a business continue to violate the law.

Trustee Patrick expressed concern that on both occasions, the employee actually looked at a license that indicated that the customer was underage, and then sold the liquor anyway. He felt it is important that the applicant understands that if this occurs again, there will be specific action taken regarding the license.

Attorney Fickel noted the Board needs to renew the license or set this for hearing. No other action is appropriate for this discussion.

Trustee Patrick asked if in order to make reasonable amendments that would be appropriate for the information provided from the documents, we would need to have a hearing. Attorney Fickel noted that the Board can set general policy that encourages licensees to attend training sessions. To the extent that we are requiring this applicant to do so as a condition of his license renewal may not be appropriate.

Trustee Buckingham asked if the amendment is appropriate. Attorney Fickel noted as long as the requirement applies to all of our businesses, then it is appropriate. Trustee Buckingham agreed that is the case, and noted the requirement is not a condition of renewal.

**Board members voted on the main motion. Trustee Patrick voted NO and all other members voted YES.**

### LEHMAN COMMUNICATIONS

Administrator Jim White noted that Lehman Communications Corporation publishes two daily newspapers equidistant from Berthoud; the Longmont Daily Times Call and the Loveland Reporter Herald. They own land on 2<sup>nd</sup> Street in Berthoud, CO and hope to build a printing facility at that location. Following meetings with Lehman representatives, personnel from the Northern Colorado economic Development Corporation, the Berthoud Economic Development Council and Larimer County, staff is recommending that the Town Board consider offering rebates as incentive for this new business as it plans to bring 86 jobs to the Town. Potential financial benefits are outlined in the included reports, and Schedule 2 itemizes the total \$164,400 abatement requested by Lehman Communications Corporation in the areas of personal property tax, use tax, and road impact fees.

Administrator White noted staff has ruled out the mitigation of any road impact fees. Staff is recommending that we allow the applicant to get into business and then in years 3-7, give them a 50% rebate in both areas. Attorney Fickel noted we must be careful

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about modifying fees, such as the road impact fees. We paid a significant amount of money to establish these fees, and if we change the fee for one entity would require us to re-evaluate those fees or come up with the money to replace any fees that are rebated. Attorney Fickel concurred with the suggestion that the Board look at other areas, including use tax and property taxes on personal property, which would be revenues that the Town would not receive if the business was not a part of the Town. Attorney Fickel noted the bulk of their expenses will come in years 1-2, but the Town does not have the capacity to rebate funds at this time. Years 3-7 would not be as significant to the applicant, but would also not be so significant to the Town.

Administrator White noted that the Northern Colorado Economic Development Corporation participated in these discussions and they they indicated that it is not uncommon to start something of this type in the third year, in light of the Town's financial situation.

Mayor Karspeck noted the alternative would be to pass this on from year one, and the advantage to that would be to get this project moving forward.

Trustee Buckingham stated that he likes the idea of performance incentives and felt the five year period would be appropriate. He felt it would be a good use of half of the taxes and even collecting half the taxes would benefit the Town. These are taxes we don't have now and this would create a win-win with Lehman.

Trustee Thorstensen noted that by removing the road impact fees, we would only be giving this business approximately \$100,000, instead of the \$164,400 they are requesting. He suggested extending the period of time to 6-7 years to increase the amount they would receive.

Trustee Patrick noted the difficulty that the Board has is determining what the community can afford and under what categories. He suggested the most appropriate category would be to rebate personal property taxes. He suggested that use tax is designed for a specific purpose and would not be something we could replace in the general fund. In contrast, personal property tax is something that we would not otherwise received. He suggested we focus on personal property tax and extend the amount of time 1-2 years to increase the amount that we give back to the business. He suggested we look at personal property rebate as the sole source for this rebate and if we need to do a higher dollar value, add a year or two to that rebate period.

Mayor Karspeck felt this is our chance to make a strong statement that we are interested in bringing growth to Berthoud, especially growth that brings jobs to our community. We have rebated taxes in the past to retail businesses. This company is bringing good jobs to our community and he suggested that this is an opportunity to make a statement

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that we are serious about economic development. He noted he would like to see us give them an immediate benefit, rather than delaying the period two years.

Trustee Patrick noted the job is to balance out what the community can afford with what will benefit the business. He noted we need to find funds that do not have to be paid back.

Mayor Karspeck noted that there is not a distinction between use tax and personal property tax. Both go into the general fund and can be used. Those funds are not dedicated to any specific purpose and would not have to be replaced.

Trustee Patrick noted that if we look at use tax and personal property tax as new revenues, then we would be contributing approximately \$30,000 per year to this business. That would also give the Town \$30,000 a year that we would not have otherwise seen. That would be a win-win for both the Town and the business and would not be setting a precedent that we would not be willing to repeat.

Attorney Fickel noted there are other things we can do and areas where we can provide assistance that will benefit this business. We will want to put their building on the front burner and help them move through the process.

Ken Amundson, Editor and General Manager of Lehman Press, addressed the Board. He noted it is obvious that the Board has given their request careful consideration. He noted that since they have not seen the information provided to the Board, they are not sure of the details. He asked how the reimbursement would be handled. Attorney Fickel noted that money would be refunded, based on a designated percentage of the money collected from the business, up to a maximum amount. He noted it would be of greater benefit to be able to receive a rebate on the use tax spent during years 1-2 when the plant is under construction. He noted they intend to build a rail spur, which would have an immediate positive impact for the Town.

Tom Krough, Director of Finance for Lehman Press, thanked the Board for being willing to work with them to bring the business to Berthoud. He noted the numbers that were given to the Board were based on the value of their existing equipment and the new equipment they plan to purchase. He noted they are willing to have the agreement extended out to get to a target number.

Mayor Karspeck noted that there would be no rebates of the mill levy set aside for the Library and the Police Department, since these are voter approved mill levies. Board members agreed.

Administrator White noted that it was never presented that the Board would aim for the numbers requested. When the applicant came before the Board they understood that the Board might offer a portion or percentage of what was requested.

Trustee Patrick noted the general opinion is that not common for municipalities to extend inducements in some of these areas. If and when this is done, it is generally done with personal property tax. He felt that is the area that gives the Board the most flexibility, and he was glad that the Board has the flexibility to look at duration.

Mr. Amundson noted that the ability to fast track this through the system to get project going will be valuable, and he noted staff has already been very helpful in working on this project. Mayor Karspeck asked when they anticipate being up and in operation. Mr. Amundson noted they anticipate a 12-15 month construction period and hope to be in the building by 2009.

Mayor Karspeck noted he would like to see us include use tax, since if we don't have the business, we will not be collecting any tax. He felt it would be appropriate to front load the rebates to get this project off the ground.

Administrator White suggested that a compromise might be to rebate a lesser percentage during the first two years.

**Trustee Buckingham moved that subject to a not to exceed value of \$150,000, the Board approve a 50% rebate of the use tax beginning in year one and a 50% rebate on personal property tax from years 3-7, subject to the statutory mill levies for the Library and the Police Department being excluded from the rebate. Second by Trustee Patrick.**

**Trustee Patrick moved to limit all credits to the first seven years. Second by Trustee Buckingham. The amendment passed unanimously.**

**Members voted on the main motion and the motion passed unanimously.**

#### **EXECUTIVE SESSION – NEGOTIATIONS**

Attorney Fickel noted that John Allum is present to provide information and then if the Board feels it is necessary to adjourn to an executive session for negotiations, that can be done.

Administrator White explained that the Board has been considering the pursuing the option of electric municipalization for new development in Berthoud. The Town tried previously to take over the entire electric service for the Town and that was voted down. What we are looking at now is to focus on providing this service for new developments within the Town.

John Allum addressed the Board and provided information regarding the proposal, based on information distributed to the Board.

### **RESIDENTIAL ARCHITECTURAL STANDARDS & GUIDELINES**

Planner Anderson noted the Board reviewed the proposed Residential Architectural Standards and Guidelines during the last meeting, and staff is recommending that the version from October 12, 2006 be approved. In addition, on June 21, 2005, the nonresidential architectural standards were revised, but were never formalized by resolution or ordinance. Planning staff is recommending that we address this during the public hearing for the residential architectural standards.

Trustee Buckingham moved to set the public hearing for January 22, 2008. Second by Trustee Sommars. The motion passed unanimously.

### **PLANNING AND ZONING APPOINTMENT**

Planner Anderson reported that there was a recent resignation from Mr. Monte Jordan. Planning Commission Chairman Chris Thorne, along with the Interview Committee recommends that Ron Liebman be appointed to the Planning Commission. Mr. Liebman interviewed for the vacancy at the same time as Monte Jordan and David Mineo.

Trustee Gervasi moved to approve the appointment of Ron Liebman to the Planning and Zoning Commission. Second by Trustee Patrick. The motion passed unanimously.

### **LIBRARY BOARD APPOINTMENTS**

Mayor Karspeck noted he has not had the opportunity to interview the applicants and he asked that this be postponed to allow him that opportunity. Board members agreed.

With no further business, the meeting adjourned at 9:45 p.m.

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Mayor Milan Karspeck

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Deputy Clerk Charlene Reed